

9 FAM Appendix N, 200 VISA PETITIONS

(*TL:VISA-433; 07-02-2002*)

9 FAM 201 AUTHORIZATION TO APPROVE PETITIONS AT CERTAIN POSTS

(*TL:VISA-433; 07-02-2002*)

a. INS has authorized consular officers assigned to visa-issuing posts abroad (other than those in Austria, Germany, Greece, Hong Kong, India, Italy, Kenya, Korea, Mexico, The Philippines, Singapore, Thailand and the United Kingdom of Great Britain and Northern Ireland) to approve petitions for any of the statuses accorded to relatives, under certain circumstances. Form I-130, Application for Immigrant Visa and Alien Registration, is used to accord immediate relative status under INA 201(b), first, second, third, or fourth preference status under INA 203(a). Form I-600 is the petition for status for an orphan as an immediate relative under INA 101(b)(1)(F). Form I-360 is used by widows and widowers to petition for immediate relative status.

b. Consular officers may exercise such authority with regard only to the approval of visa petitions, not to the denial thereof. The consular officer must ensure that the petition meets the appropriate requirements listed below before approving the petition. [See also 9 FAM 42.41 N4.]

c. Consular officers must forward petitions which are not clearly approvable to the *INS Officer-in-Charge at the INS office with jurisdiction over the post* [See 9 FAM Appendix N, Exhibit I], together with all supporting documents, for adjudication.

9 FAM 201.1 Location of Petitioner and Beneficiary

(*TL:VISA-152; 09-09-1996*)

a. As a general rule, the petitioner must reside in the consular district but the residence or even physical presence of the beneficiary is immaterial. The petitioner must execute the petition in person before the consular officer. In emergent or humanitarian cases as well as those in the national interest, the consular officer may use discretion in accepting a Form I-130, Application for Immigrant Visa and Alien Registration filed by a petitioner who does not reside in the consular district. Consular officers must use this discretionary authority on an individual case basis but may consider circumstances such as a beneficiary who is a very young child or an aged parent or a very recent marriage abroad to the beneficiary to meet

the "humanitarian" test. The petitioner must, regardless of place of residence, present evidence of relationship to the beneficiary and his or her own status in the United States in support of the petition.

b. If a consular officer at a nonimmigrant visa-issuing post receives a Form I-130 petition, the officer should suggest that the applicant apply at the immigrant visa-issuing post in the country. If such a requirement places a hardship on the petitioner, however, the consular officer may accept the petition for processing.

9 FAM 201.2 Evidence of U.S. Citizenship

(TL:VISA-152; 09-09-1996)

a. Petitions filed by U.S. citizens must be accompanied by primary evidence of the petitioner's U.S. citizenship unless it is unobtainable. The petitioner may meet this requirement for primary evidence of citizenship by providing:

- (1) The petitioner's birth certificate reflecting birth in the United States;
- (2) A certificate of U.S. naturalization or citizenship issued in the petitioner's name;
- (3) An unexpired passport issued for full validity to the petitioner as a citizen of the United States (not as a noncitizen national);
- (4) A statement executed by a consular officer certifying the petitioner to be a U.S. citizen and the bearer of a currently valid passport; or
- (5) A Form FS-240, Report of Birth Abroad of a Citizen of the United States of America, relating to the petitioner.

b. A petitioner who is unable to obtain primary evidence of citizenship may submit other forms of evidence. [See 8 CFR 204.2(a) for further information concerning documentation which INS accepts when primary evidence of U.S. citizenship is unavailable.]

9 FAM 201.3 Evidence of Lawful Permanent Resident Alien Status

(TL:VISA-152; 09-09-1996)

An alien petitioner claiming to be a lawful permanent resident of the United States may establish such status by submitting one of the following forms of primary evidence:

- (1) A passport bearing an INS endorsement reflecting a lawful admission for permanent residence; or

- (2) Form I-551, Alien Registration Receipt Card.

In the absence of either of the above, such status may be verified from official INS records.

9 FAM 201.4 Petition Submitted on Behalf of a Spouse

(TL:VISA-152; 09-09-1996)

A petition submitted on behalf of a spouse must be accompanied by a certificate of marriage between the petitioner and the beneficiary and proof of the legal termination of any previous marriage(s) of either party, as well as a recent ADIT-style photograph of each party. Other photos will be accepted if ADIT-style are unavailable in that country.

9 FAM 201.5 Petition Submitted by a Widow or Widower

(TL:VISA-152; 09-09-1996)

A petition for immediate relative status filed by a widow or widower of a United States citizen must, in addition to the usual evidence for a spousal petition, be accompanied by evidence of the U.S. citizenship and of the death (within the two preceding years) of the deceased marital partner. The widow or widower may file such a petition only if the marriage to the U.S. citizen had lasted at least two years and was still in effect at the time of the death. A child of the widow or widower may be included in the petition as a derivative beneficiary.

9 FAM 201.6 Petition on Behalf of a Child, Son, or Daughter

(TL:VISA-152; 09-09-1996)

a. A parent filing a petition on behalf of a child, son or daughter must present evidence of his or her own citizen or lawful permanent resident status, as well as of the relationship.

b. A petition submitted by a mother on behalf of a child, son, or daughter must be supported by the child's birth certificate showing the current name of the mother. If the mother's present name differs from that at the time of the child's birth, the mother's marriage certificate and evidence of the legal termination of any prior marriage(s) must be submitted. If the change of name did not result from the marriage of the mother, other appropriate evidence of the name change must be submitted.

c. If a petition is submitted by a father on behalf of a legitimate child, son, or daughter or is filed by a stepparent, the following documents must accompany the petition:

- (1) A certificate of marriage of the parents;

(2) Proof of the legal termination of any prior marriage(s) of the parent(s); and

(3) The birth certificate of the beneficiary.

d. If a petition is submitted by the father of a legitimated child, son, or daughter, the petitioner must submit:

(1) Evidence of the child's legitimation, which must have taken place before the child reached the age of 18;

(2) Proof of legal termination of any prior marriage(s) if the legitimation was the result of the marriage of the natural parents to each other; and

(3) The birth certificate of the child, son, or daughter.

e. If a petition is submitted by the alleged natural father of a child, son, or daughter born out-of-wedlock, the petitioner must establish that:

(1) He is the natural father of the offspring; and

(2) A bona fide parent-child relationship exists or has existed while the child is or was unmarried and under the age of 21.

(Such a relationship exists or has existed when the father evinces or has evinced an active concern for the child's support, instruction and welfare. Documents to manifest this concern may include (but are not limited to) the child's birth certificate, local civil records, affidavits from knowledgeable persons and evidence of financial support. INS may require blood tests from the petitioner, beneficiary and the beneficiary's mother.)

f. A marriage certificate reflecting the daughter's maiden name must be submitted when the beneficiary is a married daughter.

g. A petition may be filed for an adopted son or daughter who is over the age of 21 if an adoption decree is submitted to establish that the adoption took place prior to the adoptee's 16th birthday and evidence is submitted showing that the parents have had legal custody and resided with the adoptee for at least two years.

9 FAM 201.7 Petition on Behalf of a Sibling

(TL:VISA-278; 05-11-2001)

a. A petition filed on behalf of a brother or sister having a common mother with the petitioner must be accompanied by birth certificates of the petitioner and beneficiary, each listing the same mother.

b. A petition filed on behalf of a brother or sister having a common father with the petitioner and different mothers must be accompanied by the birth certificates of the petitioner and beneficiary and also by marriage certificates of the petitioner's parents and the beneficiary's parents.

c. If either the petitioner or the beneficiary was born out-of-wedlock and the common parent is the father, evidence of legitimation prior to the age of 18 or of an established parent-child relationship [see 9 FAM Appendix N, 201.5 d] must accompany the petition.

d. Proof of the legal termination of any prior marriage(s) of each parent must accompany the petition in appropriate cases.

e. If the petitioner or beneficiary is a married woman, the marriage certificate reflecting her maiden name must be provided.

9 FAM 201.8 Petition on Behalf of a Parent

(TL:VISA-278; 05-11-2001)

a. A petition submitted on behalf of a mother must be accompanied by a copy of the petitioner's birth certificate which shows the current name of the mother. If the mother's name differs from that on the petitioner's birth certificate, evidence showing the name of the mother at the time of the child's birth (for example, a marriage certificate of the mother having the name shown on the petitioner's birth certificate) must be submitted.

b. If a petition is submitted on behalf of a father of a legitimate child or on behalf of a stepparent, the petitioner's birth certificate, the marriage certificate of the parents, and proof of the legal termination of any prior marriage(s) of either parent must accompany the petition.

c. If a petition is submitted on behalf of a father of a legitimated child, the petitioner's birth certificate, evidence that legitimation took place before the petitioner reached age 18, and, if legitimation occurred through marriage of the natural parents to each other, evidence of the legal termination of any prior marriage(s) of either parent must accompany the petition.

d. If a petitioner born out-of-wedlock submits a petition on behalf of his or her father, evidence to show that the beneficiary is the natural father of the petitioner and that a parent-child relationship exists or has existed must accompany the petition. [See 9 FAM Appendix N, 201.5 d.]

9 FAM 201.9 Petition on Behalf of an Orphan

(TL:VISA-278; 05-11-2001)

a. Consular officers are authorized to approve orphan petitions when the INS district director at a stateside office has made a favorable determination concerning an advance processing application. This will be reflected by receipt of the approved Form I600A or telegraphic or faxed notification of its approval. The occasion will arise when the prospective petitioner (or married petitioner and spouse) has traveled abroad to:

- (1) Adopt a known child (after both the petitioner and spouse, if any, have personally seen and observed the child);
- (2) Facilitate the adoption in the United States of a known child; or
- (3) Locate and adopt a child.

b. The consular officer's adjudication of the petition must include all aspects of eligibility for classification as an orphan under INA 101(b)(1)(F), other than the ability of the prospective parent(s) to furnish proper care for the beneficiary orphan. [See 9 FAM 42.21 N13.4 .] The consular officer must forward for adjudication by the INS office having jurisdiction over the child's area of residence any petition which is not clearly approvable. [See 9 FAM Appendix N, 201 c.]

201.10 Evidence of Legal Termination of a Marriage

(TL:VISA-152; 09-09-1996)

Primary evidence to establish legal termination of a marriage consists of the divorce decree, the annulment document, or the death certificate of a prior spouse.

201.11 Married Woman as Petitioner or Beneficiary

(TL:VISA-152; 09-09-1996)

If the petitioner or the beneficiary is a married woman, her marriage certificate must usually be submitted with the petition. However, when the petitioner and beneficiary are mother and child, regardless of the child's age, the mother's marriage certificate need not be submitted if the mother's present name appears on the child's birth certificate.

9 FAM 202 CONSULAR OFFICER ACTION SHOWN ON PETITION FORM

(TL:VISA-278; 05-11-2001)

a. A consular officer must indicate approval of a visa petition by completing the appropriate spaces in the block captioned "To the Secretary of State" and by crossing out that phrase. Spaces to be completed include the:

- (1) Petition filing date;
- (2) Section of the law under which the petition was approved;
- (3) Signature of the approving consular officer;
- (4) Title and location of the consular officer; and
- (5) Date of approval.

b. The post must charge the prescribed fee for filing Form I-130, Form I-360, or Form I-600. When the fee is collected, a notation of "\$XX fee received" should be entered in the fee stamp box. [See 9 FAM Appendix N, Exhibit III.]

9 FAM 203 STATISTICS OF APPROVED PETITIONS ON FORM G-22:2

(TL:VISA-278; 05-11-2001)

Each post shall forward a report each month to the Statistical Analysis Branch of INS [as shown in 9 FAM Appendix N, Exhibit IV, Format for Monthly Statistical Report to INS of Actions Taken on Forms I-130, Application for Immigrant Visa and Alien Registration] noting the number of Form I-130 petitions approved. Negative reports are not required. Posts should locally reproduce the format for the report.

9 FAM 204 REFERRAL TO INS

(TL:VISA-433; 07-02-2002)

The consular officer must refer the petition and supporting documents to the *INS Officer-in-Charge at the INS office with jurisdiction over the post* for adjudication [See 9 FAM Appendix N, Exhibit I] if the:

(1) Primary evidence submitted does not satisfy the consular officer that the petitioner is a U.S. citizen or permanent resident alien, or that the relationship to the beneficiary claimed in the petition exists, or

(2) Petitioner cannot present primary evidence relating to such matters.

9 FAM 205 FEE COLLECTION

(TL:VISA-278; 05-11-2001)

Fee payments may be in the form of U.S. currency, local currency, certified check, or international money order. In any country where currency control laws make it difficult or impossible to purchase dollar drafts or international money orders, or to send money out of the country without subjecting the applicant to possible criminal prosecution, consular officers are authorized to collect INS fees in local currency. The consular officer must require payment of the dollar equivalent of the fees, in accordance with standard exchange procedures. The cashier must follow the instructions prescribed for the collection of fees which are set forth below in 9 FAM Appendix N, 205.1 and note on Copy 2 of Form OF-233, Consular Cash Receipt, the INS office to which the application or petition was forwarded for action. In collecting such fees, consular officers are also requested to make appropriate notations on the applications or other forms of the amount of the fee collected, the date, and the name and title of the officer making the collection.

9 FAM 205.1 In Approved Petition Cases

(TL:VISA-278; 05-11-2001)

a. When the prescribed filing fee is collected for a petition approved by a consular officer, rubber stamp the consular seal on the endorsement indicated in 9 FAM Appendix N, 202 . [See 9 FAM Appendix N, Exhibit III for Schedule of INS Fees.] The cashier must also record the receipt of the fee on Form OF-233, Consular Cash Receipt. The entry under "Visa Symbol or Type of Service" should read as follows:

Petition Form I-130 (or 360 or 600, as appropriate) filed by (name of petitioner) on behalf of (name of beneficiary) collected on behalf of the INS.

b. While these fees may be delivered to the United States Disbursing Office in the Treasury Department, the Department normally sends such funds directly to INS.

9 FAM 205.2 In Forwarded Petition Cases

(TL:VISA-152; 09-09-1996)

The post should not create a collection record or make other notations on the petition when a fee is only collected and forwarded to an INS office in connection with an application for a service to be performed by INS.

9 FAM 206 RETURN AND REVOCATION OF PETITIONS

(TL:VISA-278; 05-11-2001)

See 9 FAM 42.43 Regs/Statutes and 9 FAM 42.43 Notes for information on the return of petitions to INS and on the revocation of petitions.